

FIRST REGULAR SESSION

# SENATE BILL NO. 101

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREEN.

Pre-filed December 3, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0248S.011

## AN ACT

To repeal section 633.135, RSMo, and to enact in lieu thereof one new section relating to the membership of department of mental health review panels.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 633.135, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 633.135, to read as follows:

633.135. 1. If a resident, or his parent if he is a minor, or his legal  
2 guardian refuses to consent to the proposed placement or to discharge from the  
3 facility, the head of the mental retardation facility may petition the director of  
4 the division to determine whether the proposed placement is appropriate under  
5 sections 630.610, 630.615 and 630.620, RSMo, or whether the proposed discharge  
6 is appropriate under sections 633.120, 633.125 and 633.130.

7 2. The division director shall [refer the petition to the chairman of the  
8 state advisory council who shall appoint and] convene a review panel composed  
9 of [three] **four** members. [At least one member of the panel shall be a parent or  
10 guardian of a resident who resides in a department mental retardation  
11 facility. The remaining members of the panel shall be persons who are from  
12 nongovernmental organizations or groups concerned with the prevention of  
13 mental retardation, evaluation, care and habilitation of mentally retarded persons  
14 and who are familiar with services and service needs of mentally retarded  
15 persons in facilities operated by the department. No member of the panel shall  
16 be an officer or employee of the department.] **The members of the panel shall  
17 consist of the following:**

18 (1) **The head of the facility in question;**

19 (2) **An employee of such facility, designated by the head of the**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 facility, who shall be familiar with the service needs of the resident in  
21 question;

22 (3) The resident, or his or her parent if the resident is a minor,  
23 or legal guardian of the resident; and

24 (4) A person designated by the resident, parent or legal guardian  
25 of the resident.

26 3. After prompt notice and hearing, the panel shall determine whether the  
27 proposed placement is appropriate under sections 630.610, 630.615 and 630.620,  
28 RSMo, or whether the proposed discharge is appropriate under sections 633.120,  
29 633.125 and 633.130. The hearing shall be electronically recorded for purposes  
30 of obtaining a transcript. The [council] panel shall forward the tape recording,  
31 recommended findings of fact, conclusions of law and decision to the director who  
32 shall enter findings of fact, conclusions of law and the final decision. Notice of  
33 the director's decision shall be sent to the resident, or his parent if he is a minor,  
34 or his guardian, by registered mail, return receipt requested. The director shall  
35 expedite this review in all respects.

36 4. If the resident, or his parent if he is a minor, or his guardian disagrees  
37 with the decision of the director, he may appeal the decision, within thirty days  
38 after notice of the decision is sent, to the circuit court of the county where the  
39 resident, or his parent if he is a minor, or his guardian resides. The court shall  
40 review the record, proceedings and decision of the director not only under the  
41 provisions of chapter 536, RSMo, but also as to whether or not the head of the  
42 facility sustained his burden of proof that the proposed placement is appropriate  
43 under sections 630.110, 630.115 and 630.120, RSMo, or the proposed discharge  
44 is appropriate under sections 633.120, 633.125 and 633.130. The court shall  
45 expedite this review in all respects. Notwithstanding the provisions of section  
46 536.140, RSMo, a court may, for good cause shown, hear and consider additional  
47 competent and material evidence.

48 5. Any resident of a mental retardation facility who is age eighteen or  
49 older and who does not have a legal guardian shall not be discharged unless  
50 probate division of the circuit court approval is obtained to confirm that the  
51 resident is not in need of the care, treatment or programs now being received in  
52 the mental retardation facility.

53 6. The notice and procedure for the hearing by the panel shall be in  
54 accordance with chapter 536, RSMo.

55 7. In all proceedings either before the panel or before the circuit court, the

56 burden of proof shall be upon the head of the facility to demonstrate by  
57 preponderance of evidence that the proposed placement is appropriate under the  
58 criteria set forth in sections 630.610, 630.615, and 630.120, RSMo, or that the  
59 proposed discharge is appropriate under the criteria set forth in sections 633.120,  
60 633.125 and 633.130.

61           8. Pending a convening of the hearing panel and the final decision of the  
62 director or the court, if the director's decision is appealed, the department shall  
63 not place or discharge the resident from a facility except that the department may  
64 temporarily transfer such resident in the case of a medical emergency.

65           9. There shall be no disciplinary action against any state employee who  
66 in good faith testifies or otherwise provides information or evidence in regard to  
67 a proposed placement or discharge.

✓

Bill

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